REMARKS

This Amendment is in response to the Office Action mailed May 25, 2006. In the Office Action, claims 20-27 were rejected under 35 U.S.C. § 101, and claims 20-57 were rejected under 35 U.S.C. § 103. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Examiner's Interview

Applicants respectfully request that the Examiner contact the undersigned attorney if, after review of the amendment, it is believed that the claims are still not in condition for allowance. The undersigned attorney believes that the interview will facilitate prosecution of the subject application.

Official Notice

Applicants respectfully traverse the contentions of official notice listed in the Office Action. The Office Action is devoid of any illustrative examples where the percentage of counts taken or is utilized, especially in connection with broadcast systems and any related method and apparatus. Therefore, we do not concur with this contention.

Moreover, the claims do not include the "multiplying by a ratio to take counts" as set forth in the Office Action. Applicants respectfully traverse this or any related Official Notice.

Claim Objections

Claims 20-27 were objected to because the phrase "which if executed by a processor" suggests that the subsequently claimed steps need not be necessarily implemented thereby rendering the scope of the claim to simply refer to a "machine-readable medium".

Applicant respectfully requests that the Examiner withdraw the objection to claims 20-27.

Rejection Under 35 U.S.C. § 101

Claims 20-27 were rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. The Examiner asserts that the claim 25 recites "a computer readable medium that provides instructions, which as set forth in the specification, may be represented by carrier wave signals or infrared signals." See page 3 of the Office Action. As such, the Examiner appears to conclude that the claims are not limited to statutory subject matter and are therefore non-statutory.

Applicant has amended the claims to recite, "An article of manufacture comprising: a computer-readable medium..." Applicant respectfully submits that the proper construction of

these claims is as claims to that subset of articles of manufacture that comprise a computer-readable medium as defined by the specification, namely any mechanism that provides (stores or transmits) information in a form readable by a machine such as a processor, computer, or any digital processing device. To the extent that the specification may provide examples of computer-readable medium that are not articles of manufacture, it is the Applicants' position that such examples are not claimed. For the purpose of providing a record that gives clear notice of the scope of the invention that the applicant claims, applicants intend to claim the broadest scope of computer-readable medium permissible, namely any article of manufacture that provides information in a form readable by a machine.

Since the claims are limited to an article of manufacture by their own terms and an article of manufacture is clearly patentable subject matter under 35 U.S.C. § 101, applicant respectfully requests that the Examiner withdraw the rejection of claims 20-27 under 35 U.S.C. § 101 as lacking patentable utility.

Rejection Under 35 U.S.C. § 103

1. Claims 37-40, 43-46 and 48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Bedard (U.S. Patent No. 5,801,747). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143; see also In Re Fine, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988).* Herein, the combined teachings of the cited references fail to describe or suggest all the claim limitations.

With respect to independent claim 37 for example, Applicants respectfully submit that neither APA nor Bedard, alone or in combination, describes or suggests "preventing rollover of count values by adjusting the relative statistics of each item...in response to a count value...reaching a predetermined value." As claimed, rollover is a condition where the count value of the first item of the one or more items, which is a relative statistic of the first item, reaches the predetermined value before being reset.

Bedard teaches decrementing viewing units associated with entries of a viewer profile array (200) until an entry of the viewer profile array (200) reaches zero. *See Col. 5, lines 59-66 of Bedard.* This decrementing of the viewing unit values for each entry of the viewer profile is performed in order to add a new entry at the top of the viewer profile array (200). *See Col. 5, lines 66 to Col. 6, line 4 of Bedard.* Such actions are in response to the lack of room in the viewer profile array (200) for the new entry, and these actions are not in response to the count value (viewing unit values of the entry) reaching the predetermined value as claimed. Withdrawal of the outstanding §103(a) rejection is respectfully requested.

With respect to claims 38-40, 43-46 and 48, Applicants respectfully submit that such claims are in condition for allowance based on the lack of establishing a *prima facie* case of obviousness. Since these claims are dependent on independent claim 37, which is considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted.

Therefore, withdrawal of the §103(a) rejection as applied to claims 37-40, 43-46 and 48 is respectfully requested.

2. Claims 41 and 42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Bedard and Graves (U.S. Patent No. 5,410,344). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established for the reasons denoted above and neither Bedard nor Graves, alone or in combination, describe or suggest *multiplying relative statistics for each item of the one or more items by a weighting factor assigned to the item*, and (ii) ranking a predetermined number of items based on the highest weighted values as part of the list of favorites. Emphasis added. Rather, Bedard does not describe or suggest this claim limitation. Graves describes *synaptic weights* and does weights do not constitute the weighting factor as claimed. Thus, the combined teaching does not suggest the limitation of multiplying relative statistics for each item of the one or more items by a weighting factor assigned to the item.

Moreover, since claims 41 and 42 are dependent on independent claim 37, which is considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted. Withdrawal of the outstanding §103(a) rejection is respectfully requested.

3. Claim 47 was rejected under 35 U.S.C. §103(a) as being unpatentable over Applicant's admitted prior art (APA), in view of Bedard and Rothmuller (U.S. Patent No. 5,635,989). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established, but further discussion of the grounds for traverse is not warranted based on its dependency on independent claim 37, which is considered to be in condition for allowance. Applicants respectfully request that the outstanding §103(a) rejection be withdrawn and reserve the right to submit such arguments in the event that an Appeal is necessary.

4. Claims 20-22, 25, 27, 29-31, 33, 34, 36, 46, 48-53, and 55-57 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Saib (U.S. Patent No. 5,973,682) and Bedard. Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established.

For instance, with respect to claim 34, Applicants respectfully submit that neither APA, Saib nor Bedard, alone or in any combination, suggests a receiver coupled to the display and that is adapted to maintain the relative statistics related to a plurality of items of the tuning event, to prevent rollover of a count value by *automatically adjusting the count value* of each of the plurality of items relative to each other *once one of the plurality of items reaches a maximum value* so that an order of the plurality of items according to count value remains intact. Emphasis added.

Moreover, for independent claims 25 and 49, rollover (considered by the Examiner as mere decrement of viewing units per Bedard) is not prevented through adjustment of the count value upon (or once) the count value reaching a predetermined value as claimed. Rather, the combined teaching is directed to decrementing the viewing units (alleged to be "count value") in response to no further storage in the viewing profile array.

Applicants respectfully request that the outstanding §103(a) rejection be withdrawn and reserve the right to submit such arguments in the event that an Appeal is necessary..

With respect to claims 20-22, 27, 29-31, 33, 36, 46, 48, 50-53, and 55-57, Applicants respectfully submit that such claims are in condition for allowance based on the lack of establishing a *prima facie* case of obviousness. Since these claims are dependent on independent claim 25, 34 and 49, which is considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted.

5. Claims 23 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Saib, Bedard and Finseth (U.S. Patent No. 6,813,775). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established. Since these claims are dependent on independent claim 25 and 34, which are considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted.

6. Claims 23, 35, and 47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Saib in view of Bedard and Rothmuller. Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established. Since these claims are dependent on independent claim 25 and 34, which are considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted.

7. Claim 54 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Saib, Bedard and Graves (U.S. Patent No. 5,410,344). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established. Claim 54 depends on independent claim 49. Thus, this claim is allowable based on its dependency on allowable claim 49. Applicants respectfully reserve the right to further submit additional grounds for traversing the rejection if an appeal is warranted.

Conclusion

In light of the foregoing, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Dated: August 25, 2006

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